NO. 80-994

Supreme Court, U. S.
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In the Supreme Court of the United States

October Term 1980

HERMAN DIAMOND,
Petitioner,

v.

LAMAR C. WALTER, Assistant United States Attorney, United States Department of Justice
Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

HERMAN DIAMOND, pro se
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QUESTIONS PRESENTED

1. Has the lower Courts departed from accepted and usual course of Judicial Proceedings so as to call for this Honorable Court's power of supervision,.
When a District Court grants a Summary Judgment in favor of Respondent,an U.S. Assistant District Attorney,who files an unauthorized Civil Complaint against Plaintiff and pretends to represent the U.S. Government in his own complaint,for violations of Federal Law not adjudicated, without Jurisdiction in conflict with the Statutory provisions applicable, grants abosolute judicial immunity,without a hearing or trial,upon consideration and the Court of Appeals Fifth Circuit,affirms the Judgment and denies a rehearing.
For a tort action,and for violations of Federal and state laws and Articles of the Constitution,and a Compact between Federal Government and the State of Georgia,and Petitioner's Civil Rights,and for Malicious Abuse of Legal Process,to harm and cause irreparable damage to Plaintiff and his property by a fraudulent Permenant Injunction not authorized by law.

TABLE OF CONTENTS

	page
Questions presented, ...	1
Statues involved, ...	2
Jurisdiction, ...	2
Statement of the Case.....	2
Argument,.....	6
Review should issue	18

APPENDIX

	PAGE
Complaint in CV 479-87	1a-4a
Order and Judgment to Consolidate Ca.3092, pursuant to F.R.C.P.42 (a).	5a-6a
Decision of Court of Appeals, 5th Cir... modifying CA3092	6a
Judgment in CV479-87	8a
Rehearing denied, Court of Appeals ..	9a
Complaint CA 3092	10a-13a
Motion to dismiss	14a
Judgment in CA 3092	15a-16a
Georgia Cession, 1802	17a-19a
Art. 4,6 of U.S.Constitution	20a

U.S. STATUES

Title 18 U.S.C. § 1,.....	7a
" 18 U.S.C. § 1,(2)(3)	22a
" 18 U.S.C. § 2236	22a
" 33 U.S.C. § 1, ...	21a

page

Title 33 U.S.C.§§ 406 ..... 7a
" 42 U.S.C.§§ 1983 ..... 16a

Code of Federal Regulations

33 C.F.R. 209260 (k)(1)(ii) 21a

GEORGIA STATE LAWS & CONST.

Riparian Rights 20a
State Boundries 22a
Title; Ga. Code
15-101 ..... 23a
15-201, Sovereignity,.....23a
85-1310, Right to embank 23a
105-1401, private property 23a
105-1402 right of action 23a
105-1406, trespass, ... 23a

TABLE OF AUTHORITIES

page

Cherokee Nations v. State of Georgia ,,
8 L.Ed 475, 5 Peter,106 U S 41 11
Kittler v. Kelsch, ND 216 N.W.898...
56 A.L.R. 1220,1221,..... 10
Leong Yau, v. Carden, 23 Haw 362,... 10
Richmond Mica Co.v. De Clyne 90 Fed.
Reporter 660, 661 9
Little v. Barreme, 2 Cranch 170
2 L.Ed.243 8
Mississippi v. Johnson,
71 US 439, 18 L.Ed 475 11

page

Philadelphia Co.v. Stimson
223 US 159, 56 L.Ed 728 8
Shaw v. Moon 117 Or 558
45 ALR 600,245 Pac. 318 10
Schneider v. Sheppard, 192 Mich 82
158 NW 182 10
RE Sawyer, 124 US 200,210,
31 L.Ed 402,405 7
Smith v. U.S., CA Ga.1967,
375 F.2d.243,88 S Ct. 76, 389 US 841,
192 L.Ed.106 15
Securities and Exchange Comm. v. Chenery
Corp. 318 US 78-80, 87 L.Ed.627..... 8
Ex Parte, Young, 209 US 159,
52 L.Ed. 728,13 LRA ns 932 8
U,S, v. Diamond, 512 F.2d. 157
Cert. Den. 423 US 928 (5th Cir)1975....4
U.S. v. Hall, CA Cal,1944,
145 F.2d 781, Cert. Den. 65 S Ct.1016
324 US 871, 88 L.Ed.1425.....15
U.S. v. Kane, 602 F.2d.490-494,..... 8
U.S. v. Lee,106 US 196,220,221,
27 L.Ed 171,181,182..... 8
U.S. v. Morin, DC Ind. 1866,
Federal Case,15,810 17

FEDERAL STATUES

28 U,S.C.§§ 1, ...
28 U.S.C. §§ 515 7

FEDERAL STATUES

page

28 U.S.C.§§ 1252 2
28 U.S.C.§§ 1331 ..... 2, 3
28 U.S.C.§§ 1343 (4) 2, 3
28 U.S.C.§§ 1345 4,12
18 U.S.C.§§ 2236 15
33 U.S.C.§§ 1, ... 12,13
33 U.S.C.§§ 403, ... 4,6,7,10,11,13,17
33 U.S.C.§§ 406 ..... 6, 7,11,15,17

Code of Fed Regulations

33 C.F.R. 209260,(k)(1)(ii) 1973,..12,13

Fed.Rules of Crim. Procedure

Rule
3,4,10, ... 9
42 (a) Fed. Rules Civ. Procedure, ...16

ARTICLES OF THE U.S. CONSTITUTION

Article page

4, ... 3,10,11,13 ,14
5, ... 11, 13
6, ... 3, 14
7, ... 6, 14,16
10, ... 14
14, ... 10,14

Whartons Crim. Law § 25: 17
Administrative Law,§§ 213, ... 8,13
74 AM JUr 2d,§§ 37, Torts, ... 7
64 ALR 3d.§§ 10, B, ... 17

GEORGIA STATE LAWS

1802 COMPACT.

	PAGE
1802 Compact, 'Georgia Cession, American State Papers,Public Lands Vol Vlll,p.125,126, Gale & Seaton, 1832, ...	11,3, 6,14,16
15-101	3.11
15-201	3,11
85-1310, ...	12
105-1401, ...	12
105-1402, ...	12
105-1406, ...	12

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 198_

HERMAN DIAMOND,
Petitioner,

versus

LAMAR C. WALTER, Assistant United States Attorney, United States Department of Justice
Respondent

Petition On Direct Appeal To The Court of Appeals For The Fifth Circuit

---

Petitioner seeks to review a Summary Judgment from the District Court based on Consideration granting Judicial Immunity to a Quasi-Judicial Officer and Affirmed by the Court of Appeals for the Fifth Circuit.

OPINION BELOW AND JURISDICTION

The lower Court, based on its opinion and consideration issued a judgment in favor defendant, Mr. Lamar C. Walter, January 18 1980, and the Court of Appeals fifth Circuit Affirmed, the Judgment of the Lower Court, based on the records and briefs on

file, pursuant to Rule 18.
Petition for rehearing was denied, October 7,1980. On October 21,1980 the Judgment of the Court of Appeal Fifth Circuit was made the Judgment of the Lower Court.

JURISDICTION 28 U.S.C.§§ 1252

Jurisdiction is invoked in which an Federal Agency and an Officer or Federal employee is a party.

For violations of the 1802 'GEORGIA CESSION' A Compact between the Federal Government and the State of Georgia.

STATUE"S INVOLVED

28 U.S.C.§§ 1331 and 28 U.S.C.§§ 1343(4)

42 U.S.C.§§ 1983.

STATEMENT OF THE CASE

On the 15th Day of March 1979, Petitioner Diamond, filed a Civil Complaint NO. 479-87 against a former United States Assistant District Attorney, for the Southern District of Georgia, Savannah Georgia.

Mr. Lamar C. Walter, a resident of Chatham County, Ga. for vilation of his Civil Rights pursuant to Title 42 U.S.C.§ 1983 and for violations of his rights pursuant to Articles of the U.S. Constitution and his rights under Georgia Law, and jurisdiction is invoked to secure redress for damages pursuant to 28 U.S.C.§ 1331 and 1343 (4) (A.p1a-4a) He is sued Individually and in his official capacity,(A, 1a-para 3). Mr. Walter is also sued for damages for violating the ' Georgia Cession' of 1802, a compact between the Federal Government and the State of Georgia and its citizens.(A.par.10.) (A.p.17a-19a).. pursuant to Articles 4 and 6 of the U.S. Constitution. (A.p.20a),and Georgia law Title 15-201,-15-101, it's boundries and the Sovereign rights of the state and its citizens.whereas the Federal Government granted jurisdiction and ceded its authority to the State for subdividing Georgia into Alabama and Mississippi.(A.p.17a-19a) over the lands of Georgia.

MR. Walters acting under color of law did not have jurisdiction or authority over Petitioner or his property to file a civil complaint in the name of the United States for a assummed misdemeanor to secure a permenant Injunction over Petitioner's property, specifically not authorized by law, and in direct violation of several Articles of the U.S. Constitution, by malicious abuse of legal process to secure results the laws of congress and the state did not intend for him to obtain,and the fraudulent manner in which atpermenant Injunction over Petitioner's property.

On April 5,1973, Mr. Lamar Walter,U.S. assistant District Attorney, filed a civil complaint NO.3092, (A.10a-13a) against petitioner Diamond, seeking a temporary order and permanent injunct.(par.1p.12a)

from depositing or dumping any refuse in the marshlands adjoining Richardson Creek. said dumping being in violation of the laws of the United States, no permit(A 11a par.4) and upon information and belief (A par.5).for violation of 33 U.S.C.§ 403,407

The Complaint is in the name of the United States of America, Plaintiff ,and by and through its undersigned Counsel,(signed by Lamar C. Walter,) (A 13a)

Jurisdiction invoked pursuant to 28 U.S.C §§ 1345, (10a)(par.1) That on April 4,1973 and at times unknown to Plaintiff, (A10a-11a,par. 3). said violations did accure.

Petitioner, filed a motion to dismiss Plaintiff's complaint on grounds that it fails to state a claim upon which relief can be granted.(A.14a)

The Lower Court issued a Judgment in CA 3092 on April 17,1974,(A.15a-16a) for violations of 33 U.S.C.§ 403,for not having a permit,defendant,Diamond,his servants,agents, employees, attorneys, successors and assigns be permanently enjoined and restrained from engaging in or causing, indirectly or permitting any fill or construction operations on the area in dispute,bounded by Richardson Creek and on the South by Oatland Island Rd, Chatham County Ga.

The Court of Appeals affirmed the decision in U.S.v. Diamond, 512 F 2d 157 Cert. denied 423 U.S. 928 (5thCir.1975)

The Courts decision was based on the Denial of a permit for a Bulkhead and not for fill,as the U.S. Attorney had several

meetings with the District Engineer to influence the denial of the permit as the exhibits in CA 3092, whereas the letter secured pursuant to the Freedom of Information Act 'indicates,'That the denial of permit will influence the Courts decision for a favorable verdict.

On 4 December 1975, The Government filed a motion to consolidate CA 3092 with CA 475-221, whereas Petitioner had requested a hearing for the denial of the permit (A.5a-6a) Thereby granting a new trial,by order of the lower Court, and since 4th December 1975 after 3 hearings the Court has of this day not issued a judgment in CA 3092, 5 years has elapsed thereby the statue of limitations has run.

The Court of Appeal Fifth Circuit had modified the judgment in 79-2942, so as to remove the Dock and walkway from the judgment although no judgment was issued in the New Trial, (A.6a) on 28 April 1980, Whereas their authority to revive the old judgment is without jurisdiction.

In Civil Action 479-87, The lower Court grant a judgment in favor of the U. S. Assistant Attorney,respondent,Walter in its opinion that the Government Attorney had absolute immunity.(A.8a)

The Court of Appeals Fifth Circuit confirmed and a rehearing was denied(A.9a) 7th October 1980.

The lower Court issued its judgment based on consideration and did not grant a hearing to allow petitioner to present his

case or facts before a jury as requested in the petitioner's complaint for damages (A.4a), and as guaranteed by the 7th Article of the U.S.Constitution.

ARGUMENT

Mr.Lamar C. Walter, former U.S. Assistant District Attorney for the Southern district of Georgia, Savannah, Ga. is a citizen and resident of Savannah, Ga.

He is being sued as an individual and as and official of the United States Department of Justice. (A.2a,par.3) in a tort action for injuries and damages and for taking of property by unlawful permenant Injunction not authorized by Acts of Congress and the State of Georgia and the 1802 Compact ,(A.15a-16a) injunction , (A.17a-19a) Compact Of 1802, and Georgia laws (A.-23a). having caused irreparable damages and harm to Petitioner.and for malicious abuse of legal process and malicious prosecution not authorized by law,

The complaint, Civil Complaint, CA - 3092 filed by Mr Walter,(A.10a-13a) on 5th April 1973 is prima facia evidence of his unlawfull action without Judicial authority, (A.10a) as he states,'Now comes the plaintiff, United States of America,by and through its 'undersigned counsel'. Mr. Walter has no authority to act as counselfor the Federal Government,to initiate a civil suit in equity for a violation of a misdemeanor, 33 U.S.C.§§ 403, for not having secured a permit.(A.11a,par.3,4) (the Judgment was for violation of 403) (A.15a).

Title 33 U.S.C.§§ 406, clearly states that the proper proceedings for an injuction may be instituted by the Attorney Gen-

eral of the United States. (A.7a) The complaint makes no mention of any authority by the U.S.Attorney General authourizing Mr. Walter to initiate the complaint CA 3092. (A. 10a-13a)

Mr. Walter cannot represent a third party,the United States Government without the statutory law.

74 AM JUR 2d, TORTS; unauthorized prosecution in the name of another.

28 U.S.C.§§ 515, when specifically directed by the Attorney General conduct any kind of legal proceedings. The record and the complaint makes no reference or is there any.

A court of equity, has no jurisdiction over the prosecution, the punishment, or pardon of crimes, or misdemeanors, To assume such a jurisdiction,or bill in equity to restrain or relieve against proceedings for punishment of offenses, is to invade the domain of Courts of common law Re SAWYER, 124 U.S. 200,210, 31 Led,402, 405

The Statue, 33 U.S.C.§§ 403 and 406

It is urged that the statues does not contiplate or authorize the alleged deprivatation of property.(A. 7a)

Where an officeris proceeding under an unconstitutional act, its invalidity suffices to show that he is without authority,and it is this absence of lawfull power and his abuse of authority in imposing or enforcing in the name of the United States, unwarrantable exactions or restrictions, to the irreparable loss of Petitioner, which is the basis of the Complaint, for the Judgment (A.15 16a) secured by Mr. Lamar Walter.respond

ent, denies Petitioner the use of his land or protection or enjoyment,

Ex parte Young 209 U.S. p.159, 52 L.ed 728 13 L.R.A. (NS) 932.

(Also denies petitioner the right to construction and the use of the Dock and walkway already approved by a U.S.Army Corps of Engineers permit, as the Court of Appeals fifth Circuit has modified in 79-2942 (A.6a) on April 28,1980.)

And a similiar injury may be inflicted and there may exist grounds for equitable relief, when an officer, insisting that he has the warrant of the statue, is transcending its bounds, and thus unlawfully assuming to exercise the power of the government against the individual owner, is GUILTY of invasion of private property.

PHILADELPHIA CO. v. STIMSON, 223 U.S.620-622, 56 L.ed 577,578.

LITTLE v. BARREME, 2 Cranch 170, 2 L.ed 243.

The conduct of the respondent, constitutes an unwarrantable interference with property of the petitioner, it's resort to equity for protection is not to be defeated up on the grounds that the officer from personal liabillity whose rights of property they have wrongfully invaded.

United States v. Lee, 106 U.S.196,220,221 27 L.ed. 171,181,182.

Administrative Law, §§ 213 - Judicial Review of orders,-Court will not substitute own Judgment.

SECURITIES AND EXCHANGE COM. v. CHENERY CORP. 318 U.S. 78-80, 87 L.ed.627.

U.S.v. KANE, 602 F.2d 490-494. state that

the denial of a permit is not a violation of the law, per se.

The complaint signed by Mr.Walter as Attorney for the Federal Government was not supplemented by an affidavit to support his charges that Petitioner was in violation of Federal law,as required when his complaint is based on his own belief and information not supported by the informer, and not stated any grounds either for his information or belief. Did he know exactly where the violation occurred, in the Marshlands adjoing Richardson Creek, (Richardson creek is 6 miles long) (A. 10a-12a, par. 3,4,5,6,7,8,)

RICHMOND MICA CO. v. DECLYNE, 90 FEd. Reporter 660,661

Petitioner file a motion to dismiss complaint for it fails to state a claim upon which relief can be granted to petitioner (A.14a).

The judicial authority of Mr. Walter as Federal Attorney,that he can institute and he must institute criminal proceedings before a magistrate for the arrest of persons reasonably suspected of a crime when he has information that such offenses have been committed, Fed Rules of Crim Procedure,

RULE 3. Complaint, it must be made upon oath before a magistrate,

RULE 4, Arrest Warrant or summons 4 (a) issuance, a warrant for the arrest of defendant shall issue.

RULE 10. Arraignment, shall be conducted in open court, and shall consist of reading the indictment or information to the defendant and calling upon him to

plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.

Therefore we have a criminal complaint and the Government Attorney's malicious abuse of legal process to file a civil complaint and place the civil trial on the courts calender for trial without due process of law and equal protection in violation of the 4th and 14 amendments of the U.S.Constitution, and the malicious prosecution for the violation of not having a permit pursuant to 33 U.S.C.§ 403

Therefore the Governments Attorney would be guilty of a misdemeanor or malfeasance in office,since his action are not in the performance of his judicial capacity.

In Kittler v. Kelsch, N.D.216 N.W. 898, 56 A.L.R. 1220, 1221,

The Attorney did act as a judicial officer whereas in CA 3092 the Attorney was not acting in his judicial capacity.

Schneider v. Sheppard 192 Mich.82 158 N.W. 182

Shaw v. Moon, 117 Or. 558, 45 A.L.R 600, 245 Pac. 318.

The acts of the States Attorney where the complaint without affidavit required by law in criminal procedure's, acts without jurisdiction.

The United States District Attorney, Mr. Jackson Smith, Did not authorise the prosecution of petitioner as his official duties require,whereas the Assistant, Attorney assummed unlawfull authority to prosecute his own complaint without the knowledge of the U.S.District Attorney and

absolute unqualified immunity for a prosecution conceived and conducted corruply with malice and bad faith.

Leong Yau v. Carden, 23 Haw.362;

The lower Court in its opinion granted a judgment (A.8a) for Respondant as to absolute immunity and the Court of Appeals Fifth Circuit Affirmed, This is Judicial error and the facts must be tried before a jury and not by consideration and Summary judgment for his unofficial acts.

The Judgment secured by the Respondent, (A.15-16a) not authorized by law, 33 U.S.C.§ 406 (A.7a)violates Articles 4 and 5 of the Constitution, a taking of private property without due process and without just compensation, and in violation of the 1802 Compact between the Federal Government and the State of Georgia. by taking jurisdiction over the property of a citizen of the State of Georgia, in violation of Article II of the Compact, as stated in,as published in Gale,Seaton 1832.p.125,126.

Mississippi v. Johnson,71 U.S.439, 18 L.Ed 475,

cited that the 1802 compact was unalterable and irrevocable.

Cherokee Nation v. State of Georgia, in 8 L.ed 475, 5 Peter 106 U.S.41

1802 compact granted the State of Georgia full soveregnty.

The judgment violates Georgia laws (A.22a) Ga. Code 15-101, Boundries of the state,

Ga Code 15-201, Extent of the States Sovereignty and jurisdiction (A.23a)

Ga. Code; 85-1310; The right to levee and ditch for overflows and freshets.

Ga. Code; 105-1401; Interferring with the enjoyment of private property.

Ga. Code; 105-1402; Bare possession of lands shall authorize the possessor to recover damages from any person who shall wrongfully in any manner interfere with such possesion.

GA. CODE; 105-1406; DAMAGES FOR CONTINUING TRESPASS, AND SUBSEQUENT DAMAGES ON A DAY TO DAY BASIS.

The District Court is without jurisdiction to issue a judgment for an unlawfull Civil Complaint by a third party fraudulently obtained without and in violation of statutory laws of Congress(A.7a) 33 U.S.C.§ 406, and 18 U.S.C.§ 1,(2)

The District Court, cannot substitute its opinion for that of the U.S.Army Corp of Engineers, that is authorized to issue permits and is granted that authority by the Act of Congress, Rivers and Harbors Act of 1899, pursuant to 33 U.S.C.§ 1,(21A and must be determined by the 33 C.F.R. § 209260(k)(1) (ii) Shoreward limits of jurisdiction(A.21a)(1973 code) and such regulations must be posted, in conspiciously and appropriate places, for the information of the public,No such regulations have been or now is posted in such places.

Jurisdiction is invoked pursuant to

28 U.S.C.§ 1345; UNITED STATES AS PLAINTIFF; Except as otherwise provided by Act of Congress, the District Courts shall have original jurisdiction of all civil actions

suits or proceedings commenced by the United States or by any agency or officer thereof EXPRESSLY authorized to sue by Act of Congress.

The Lower Courts cannot and will not substitute it's opinion for that of the U.S.Secretary of the Army,its authority by Act of Congress Rivers and Harbors Act of 1899 requires that the permit or it's violation of 33 U.S.C.§ 403, must be determined by 33 U.S.C.§ 1, and 33 C.F.R.-209260 (k)(1)(ii) (A.21a) and upon due public notice,
ADMINISTRATIVE LAW; § 213; Court will not substitute own Judgment,

The Court has substituted it;s own judgment in CA 3092, since there was no trial by jury nor was there any request by the U.S.Secretary of the Army nor any intervention by him to have the District Attorney to act on his behalf as required bylaw.

There were several hearings and the District Court issued its own opinion and Summary Judgment in Ca 3092 initiated and filed by Respondant WALTERS, in the name of the United States.

Whereas the Judgment, is a BILLOF ATTAINDER, in that it confiscate Petitioners property for an assummed violation and works blood and corruption on his family and assignees, as stated in the Judgment (A. 15a-16a) in violation of Article and Amendment 4 of the U.S.Constitution, The right of the people to be secure in their persons,houses papers, and effects,and Amendment 5, Indictment,punisment, etc. No person shall be held to answer for a infamous crime unless upon a presentment or indictment of a grand jury, nor be deprived of life,liberty or property,with-

out due process of law and without just compensation.
and pursuant to Article 14, Equal protection of the law.

Article 10, powers not delegated to the United States,

Whereas the powers of Cession granted to the State of Georgia, by the Act of Congress in Ratifying the 1802 Compact in ceding the jurisdiction over the lands of the State of Georgia to the State. pursuant to Article 11, (A.17a-19a)

Article 7 of the Constitution,grants Petitioner a jury trial in all controversies over $20,00. Petitioner has demanded a jury trial for a tort Action in CV 479-87.

Articles 4 and 6 of the Constitution based on the 1802 Act, (A. 20a) is violated by the Judgment secured by the unlawfull action of the Assistant Attorney in CA-3092 (A.15a-16a) states, IT IS ORDERED, ADJUDGED AND DECREED that the defendant, Herman Diamond, his servants, agents,employees, attorneys.successors, and assigns, and each of them , be permanently enjoyned and restrained from engaging in or permitting suffering directly or in directly, any fill or construction operation on the area in dispute, bounded on the north by Richardson Creek and the South by Oatland Island Road, Chatham County, Georgia..

This Judgment is a clear violation all Civil Rights pursuant to 42 U.S.C.ss 1983, to harm and maliciously damage Petitioner and to take his property for a misdemeanor not properly brought before this Honorable Court, pursuant to Criminal procedure and the Rule there under and

for the violations as stated in the petition.(A.16a) and to violate Title 33 - U.S.C.§ 406, which Act of Congress states the proper manner in which to prosecute for criminal violations and upon conviction the ATTORNEY GENERAL may institute Civil proceedings, and not the Respondant, Walter's. as an Assistant Attorney.

SMITH v. U.S.,CA. Ga. 1967, 375 F. 2d. 243 certiori denied, 88 S.Ct. 76, 389 U.S.841, 19 L.Ed.2d 106

U.S. v HALL.C.A. CAL.1944, 145 F.2d. 781, Cert. denied, 65 S.Ct. 1016, 324 U. S. 871, 89 L.Ed. 1425,

The respondant, Walter, did direct several employees to search by drilling on his property to see if his property,the high ground contained any marshland below the surface and to survey by topograhic means the elevations of the lands of petitioner, during the several hearings and to take several photo graphs on several occassions without a warrant and in violation of the laws, not to trespass on Petitioners property in violation of Title 18 U.S.C.§ 2236

18 U.S.C.§ 2236, directs and without probable cause searches property without a search warrant.is fined a $1000. and for subsequent searches shall be fined $ 1000. and or imprisoned for not more than one year.

The record will show that Petitioner has filed a brief of finding of facts and citation of laws to substantiate his request for a jury trial and his complaint and fortdamages, along with the exhibits in the New trial in CA 3092 granted

on 4th December 1975 upon motion by the Federal Government, pursuant to Fed. Rules of Civ. Procedure, RULE 42 (a). (A. 5a-6a) and since 1975 after 3 hearings whereas petitioner placed 28 exhibits in evidence without any objections from the Goverment Attorneys, 1/ By Mr. Edmund Booth Jr. of Augusta,Ga.where he is employed as an U.S.Assistant District Attorney.

The District Court is in violation of Article 7, amendment of the U.S.Constitution for not granting petitioner a trial to prove his tort actions and violation of Title 42 U.S.C.§ 1983 and the several article and amendments of the Constitution and the Compact of 1802, for malicious abuse of legal process of law and the unlawfull complaint without jurisdiction in the name of the United States contrary to statutory law and acts of Congress, to issue a Judgment in favor of Respondent, Lamar C. Walter, Former U.S.Attorney,and affirmed by the Court of Appeals Fifth Circuit,and rehearing denied, 7th October 1980 *(A.8a) Judgment, (A.9a) denial of rehearing.

The respondent has not testified in any of the hearings inCA 3092 and in the new trial which vacates the original Judment,and where a new judgment must issue in a new trial,no final judgment as of this date has been issued,and the dormant complaint has run the statue of limitation of 5 years.

Where a statue prescribes a particular mode of procedure for the enforcement of

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1/ Mr. Lamar c. Walter was was releived of his office as Assistant U.S.Attorney in January 1976.and replaced by Mr. Booth.

a penalty for an offense therein created, That mode of procedure must be followed.

Wharton Criminal Law, § 25;

Title 33 U.S.C.§ 406, is the statue that provides the means and manner that a criminal procedure for fine and prison or both, and The Attorney General, 'MAY' initiate the Civil proceedings to secure a pliminary injunction for the removal of any obstruction for violations of .

Title 33 U.S.C.§ 403.

Therefor an Assistant U.S.District Attorny, such as Mr. Lamar C.Walter,who claims to represent the United States Government in his complaint, CA 3092, (A.10a)states " by and through it's undersigned Counsel' is prima facia evidence that he has not complied with the Statutory provisions of the law, since CA3092 is a civil Complaint. Repondent is without authority or jurisdiction,either to represent the United States or to have the complaint placed on the court calender for a hearing as for violations as to criminal procedure for violations of Title 33 U.S.C.§ 403,

Therefore the Government Attorney is without authority to waive the criminal fine and or imprisonment and sue for the judgment,that is also unauthorized by law.

U.S. v. Morin, DC Ind.1866, Fed CaseNO 15810,

64 ALR 3d.§ 10; B, Where officer acts without jurisdiction.

Therefore the District Court and the Court of Appeals Fifth Circuit, has committed a grave injustice in affirming the actions of the Respondent,and have taken

jurisdiction over a civil complaint that is a 'mere nullity' and committed grave and serious violations of the Constitution and the laws of Georgia and damages to the Petitioner in issuing a permenant Injunction not authorized by law, and in violations of his Civil Rights and immunities under the law.

Where Petitioner has demurried the complaint and countersued for damages, all of his legal actions have been ignored setaside over the past several years, and have allowed his property to rot, decay and become useless and worthless, are damaged beyond recovery, all because he has stood up for his rights and pursued his legal means through the courts with proper procedures and on two occassions have been denied Certiorari to this Honorable Court, the stigma seems to be, 'The Petitioner is proceeding, pro se. emphisis added.

The malicious abuse of legal process and the unauthorized manner to secure the permenant injunction without jurisdiction by the Courts and the Respondent requires the supervision of this Honorable Court, to correct and reverse the decisions of the lower courts and to grant petitioner the legal means to secure redress for the malicious and irreparable damages, by trial by jury.

Respectfully submitted

Herman Diamond

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APPENDIX

A

IN THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT
OF GEORGIA
Savannah Division

Herman Diamond, Plaintiff	)	
vs.	)	Civil Action
Lamar C. Walter, Assistant United States Attorney, United States Department of Justice, Defendant	)	No.479-87

C O M P L A I N T

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 and 1343 (4). This is an action at law authorized and instituted pursuant to 42 U.S.C. § 1983. The jurisdiction of this Court is invoked to secure redress by way of damages for the violation by Defendant of rights secured to Plaintiff by Fourth, Fifth, Sixth, Tenth and Fourteenth Amendments to the Constitution of the United States, and by 42 U.S.C. § 1983. The pendent jurisdiction of this Court is also invoked to secure redress by way of damages for denials by Defendant of rights secured to Plaintiff by Georgia Law.

2. Plaintiff Herman Diamond is a citizen of the United States, property owner and resident of Chatham County, Georgia.

3. Defendant Lamar C. Walter, as Assistant United States Attorney for the Southern District of Georgia, and resident of Chatham County, Georgia, is sued individually and in his official capacity as Assistant United States Attorney.

4. On or about April 5, 1973, Defendant Lamar C. Walter, acting under color of law, filed a civil complaint, No. 3092 against Plaintiff Herman Diamond, for violations of Federal Law pursuant to 33 U.S.C.A. § 403 and 407 and jurisdiction of this Honorable Court pursuant to 28 U.S.C. § 1345, seeking a temporary restraining order and permanent injunction over Plaintiff's property on Oatland Island Road, Chatham County, Georgia, and asking that the Court award damages both compensatory and punitive, and costs for the above action.

5. Defendant Walter, Assistant United States Attorney, maliciously and without probable cause, secured a false and misleading affidavit from Dr. Fredrick Marland on or about April 5, 1973, stating that Plaintiff Herman Diamond was filling the State's marshlands in violation of the State Marshland Act.

6. Plaintiff Herman Diamond was charged by Dr. Frederick Marland with violation of the Marshland Act on April 4, 1973, and Plaintiff Herman Diamond was acquitted by a jury in the State Superior Court for violation of the Coastal Marshland Act on January 22, 1974, thereby establishing that the affidavit used in conjunction with the complaint was false and misleading and only referred to a State violation.

7. Defendant Walter, prosecutor for the United States Government, through false and altered evidence, caused a permanent

judgment over Plaintiff's property on Oatland Island Road, Chatham County, Georgia. This continuous and permanent injunction denied Plaintiff the right to any new construction or fill on Plaintiff's property, thereby denying Plaintiff Herman Diamond the full use, enjoyment and protection of his property guaranteed by the Constitution of the United States under Article 4 and taking without due process under Article 5 of the Constitution, and denial of due process under Article 14 of the United States Constitution.

8. Defendant Lamar C. Walter is not authorized by law to institute a complaint in the name of the United States, third party or pursuant to 28 U.S.C.A. § 547.

9. Defendant Walter has not presented a certificate of authorization to institute a civil complaint in the name of the United States, pursuant to 28 U.S.C. 510 and 515.

10. Defendant Walter, Assistant United States Attorney, has no jurisdiction over Plaintiff Herman Diamond pursuant to 28 U.S.C. § 1345 nor his property. The April 26, 1802 Act of Congress, "The Georgia Cession" and the State of Georgia's Resolution of Acceptance pursuant to Article II,' whereas the Federal Government ceded jurisdiction over the lands within the boundaries of Georgia to the State of Georgia, and as stated in Georgia Code Ann. 15-201.

11. Defendant Lamar Walter has no jurisdiction over Plaintiff Herman Diamond or his property pursuant to 28 U.S.C. § 547.

12. The actions of said Defendant as described herein have violated the rights of Plaintiff as secured to him by the Fourth, Fifth, Sixth, Tenth and Fourteenth Amendments to the Constitution of the United States, and by 42 U.S.C. § 1983. Said actions also have deprived Plaintiff of the right to use, en-

joy and protect his property and from malicious prosecution as secured to him by the laws of the State of Georgia.

13. Plaintiff claims general damages arising from the judgment over Plaintiff's property alleged herein in the amount of $75,000.00.

14. Because of the wrongs alleged herein, Plaintiff was compelled to employ legal counsel to defend himself and his property in order to secure a release or removal of the permanent injunction and defending said false charges at expense to Plaintiff of $25,000.00.

15. Plaintiff was compelled by reason of Defendant's unlawful actions to lose over 100 days from his labor for attendance in Court. The value of his labor being $100.00 per day.

16. Plaintiff was greatly humiliated, pained and shamed by his prosecution and claims exemplary damages in the amount of $100,000.00 by reason of aggrevation in the acts of Defendant set forth above.

17. Plaintiff seeks damages for the taking of his property from April 5, 1973 at $100.00 per day. Plaintiff has suffered as of this date damages in the amount of $219,000.00.

18. Plaintiff has suffered total damages in the amount of $429,000.00.

WHEREAS Plaintiff Herman Diamond prays that a jury be empannelled to hear his cause, that he be awarded damages in the amount of $429,000.00 and his costs, including reasonable attorney's fees.

This 15th day of March, 1979.

/Herman Diamond.
Herman Diamond, Pro Se

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

Herman Diamond, Plaintiff,	)	
v.	)	CIVIL ACTION NO. 475-221
United States of America and United States Army Corps of Engineers, Savannah District, Defendants,	)	

O R D E R

The defendants have filed a motion to consolidate the above action with Civil Action Number 3092, United States v. Herman Diamond, now pending before this Court. The Court having read and considered the motion is of the opinion that consolidation is proper under Rule 42 (a) of the Federal Rules of Civil Procedure. Accordingly, and for good cause thus appearing, it is,

ORDERED, ADJUDGED, and DECREED that Civil Action Number 475-221, Herman Diamond v. United States of America and United States Army Corps of Engineers, Savannah District, be and the same is

hereby consolidated with Civil Action NO. 3092, United States v. Herman Diamond.

This 4 th day of December, 1975.

Alexander A. Lawrence
Chief Judge, United States
District Court, Southern
District of Georgia.

Appeals from the United States District Court for the Southern District of Geogia.

April 28, 1980

Before Goldberg, Charles Clark and Thomas A Clark, Circuit Judges.

PER CURIAM; NOT TO BE PUBLISHED

The Court finds that appellant, Herman Diamond, has the right to rebuild or repair and to maintain a dock and walkway at the same location the original dock and walkway were authorized and built under a previously issued United States Army Engineers permit, and finds that no addition or removal of fill material on any part of the lands owned by Diamond in the Richardson Creek area is to be required or permitted in connection with any rebuilding, repair or maintenance of such dock and walkway, We therefore affirm [1]/See local Rule 21 [2]/

AFFIRMED

1/ United States v. Diamond, 512 F 2d 157 (5th Cir) Cert denied 423 U.S. 928 (1975)

2/ See N.L.R.B. v. Amalgamated Clothing Workers of America, 430 F.2d 966 (5th Cir) 1970.

TITLE 33 CODE OF FEDERAL REGULATIONS,

33 U.S.C. §§ 406

Every person and every corporation that shall violate any of the provisions of section 401, 403, and 404 of this title or any rule or regulation made by the Secretary of the Army in pursuance of the provisions of section 404 of this title shall be deemed guilty of a misdemeanor and on CONVICTION thereof shall be punished by a fine not exceeding $2500 nor less than $ 500, or by imprisonment(in the case of a natural person) not exceeding one year or by both such punishments, in the discretion of the court. And further, the removal of any structures erected in violation of the provisions of the said sections may be enforced by injunction of any district Court exercising jurisdiction in any district in which such structures may excist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States. Mar. 3, 1899, c, 425, § 12, 30 Stat. 1151; Feb, 20,1900,c,23, § 2, 31 Stat.32; Mar.3, 1911, c. 231, § 291, 36 Stat. 1167.

TITLE 18,CRIMES AND CRIMINAL PROCEDURE

18 U.S.C. §§ 1

Offenses Classified.

Notwithstanding any Act of Congress to the contrary;

(1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.

(2) Any other offense is a misdemeanor.

UNITED STATES DISTRICT COURT

For The

Southern District of Georgia
Savannah Division

Civil Action File
No. CV479-87

Herman Diamond)
)
vs) JUDGMENT
)
Lamar C. Walter, Assistant)
United States Attorney,)
United States Department)
of Justice)

This action came on for consideration before the Court, Honorable B. Avant Edenfield, United States District Judge, presiding and the issues having been duly considered and a decision having been duly rendered,

It is Ordered and Adjudged that in accordance with the Court's opinion of January 17, 1980, Judgment is hereby rendered in favor of the Defendant, Lamar C. Walter, Assistant United States Attorney, United States Department of Justice, and against the Plaintiff, Herman Diamond. Costs are assessed against Plaintiff.

Dated at Savannah, Georgia, this 18th day of January, 1980.

Henry R. Crumley, Jr.
Clerk of Court

By: michel m. Bennett
Deputy Clerk

IN THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

No. 80-7121

Herman Diamond,

Plaintiff-Appellant,

versus

Lamar C. Walter, Assistant
United States Attorney,
United States Department
of Justice,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

ON PETITION FOR REHEARING

(October 7, 1980)

Before HILL, GARZA and THOMAS A. CLARK, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

James E. Hill
United States Circuit Judge

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

United States of America, Plaintiff,	)	
v.	)	CIVIL ACTION NO. 3092
Herman Diamond, Defendant.	)	

C O M P L A I N T

NOW COMES the Plaintiff, United States of America, by and through its undersigned counsel, and complaining of the Defendant, HERMAN DIAMOND, alleges and says as follows:

1. This Honorable Court has jurisdiction over this cause ofaction by virtue of the fact that the United States of America is the plaintiff herein (Title 28, United States Code, Section 1345).

2. The defendant is an individual residing and living within the Southern District of Georgia.

3. On April 4, 1973, and at times unknown to the plaintiff, and prior thereto, and continuing through until the present time, the defendant and others acting as agents of said defendant jointly and severally undertook the fill of estuarine marshlands within the

navigable waters of the United States in a marsh adjacent to Richardson Creek, Oatland Island, Chatham County, Georgia; and thereby threw, discharged, deposited, caused to be deposited, procured to be thrown, and suffered to be deposited from the shore, within the navigable waters of the United States, refuse, which includes but is not limited to the following: roots or stumps, broken concrete, construction materials, and dirt, in violation of the provisions of Title 33 United States Code, Section 407; and further, defendant has created an obstruction to navigation within the navigable waters of the United States, to wit: the estuarine marshlands adjacent to Richardson Creek, Oatland Island, the said obstruction not being affirmatively authorized by Congress and, therefore, prohibited by and in violation of Title 33, United States Code, Section 403.

4. No Department of the Army permit for dumping of fill within the navigable waters of Richardson Creek, Oatland Island, has been issued to the defendant. Defendant has not applied for said permit.

5. Upon information and belief, it is alleged that the defendant has not ceased the said depositing of refuse within the navigable waters of the United States.

6. The said refuse now lying within the estuarine marshlands of the United States is and represents an irreparable damage and harm to the plaintiff and to the people of the United States.

7. The said deposit of refuse within the navigable waters of the United States, if allowed to remain, will further impair and destroy the navigable waters of Richardson Creek, Oatland Island.

8. Unless defendant, HERMAN DIAMOND, and his agents are restrained from further depositing of refuse within the navigable waters of the United States the same will continue in their efforts to complete the unauthorized land fill operation.

WHEREFORE, the plaintiff prays to the Court:

1. That a permanent Injunction issue to restrain and enjoin the defendant from further depositing or dumping of refuse of any kind within the navigable waters of the United States, particularly in the marshlands of Richardson Creek, Oatland Island, Chatham County, Georgia, the said dumping or depositing of refuse being in direct violation of the laws of the United States; and

2. That an Order issue mandatorily compelling the defendant to remove the said refuse heretofore deposited within

the navigable waters of the United States in said area; or

3. In the alternative, that the Court award damages to the plaintiff, both compensatory and punitive, along with the costs of this action, and such other and further relief as the Court may deem just, reasonable, and proper.

Lamar C. Walter.
Lamar C. Walter
Assistant United States
Attorney

Address:

P. O. Box 8999
Savannah, Georgia 31402

IN THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF GEORGIA

Savannah Division

United States of America, Plaintiff vs Herman Diamond, Defendant State of Georgia, Intervenor	Civil Action No. 3092 FIRST MOTION

NOW COMES the Defendant, Herman Diamond and moves to dismiss the Plaintiff's complaint on the grounds that it fails to state a claim upon which relief can be granted against this Defendant.

SMITH & PORTMAN

By: Barnard Portman

By: James Smith

Attorney for Defendant

United States District Court
Southern District of Georgia
Savannah Division

United States of America	]	
	]	Civil No.
v.	]	3092
Herman Diamond	]	

JUDGMENT

This cause came on to be heard on the complaint of the United States of America, plaintiff, and the Court having heard oral evidence and admitted exhibits in open court and the Court having entered its findings of fact and conclusions of law on April 17, 1974, and it further appearing to the court that the defendant is committing acts and is about to commit acts as set forth in plaintiff's complaint, and will continue to do so unless restrained by order of this court, and that the said acts have caused irreparable injury and damage to the marshlands described in the complaint and that immediate and irreparable injury, loss or damage to the described area will result and that the activities described in the complaint have been conducted by Herman Diamond without a permit from the Secretary of Army as required by 33 U.S.C. Section 403, and are in direct violation of the laws of the United States. (con't.)

IT IS ORDERED, ADJUDGED AND DECREED that the defendant, Herman Diamond, his servants, agents, employees, attorneys, successors, and assigns, and each of them, be permanently enjoined and restrained from engaging in or permitting suffering, or causing, directly or indirectly, any fill or construction operations on the area in dispute, bounded on the north by Richardson Creek and on the south by Oatland Island Road, Chatham County, Georgia.

This 17th day of April, 1974.

Alexander A. Lawrence
Chief Judge,
United States District
Court

TITLE 42 U.S.C. §§ 1983

Every person who, under color of any statue, ordinance, regulation, custom,Or usage, of any State or Territory, subjected, any citizen of the United States or other person within the jurisdiction there of to the deprivation of any rights,privaleges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity , or other proper proceedings for redress.

7th Congress] [1st Session

No. 69

GEORGIA CESSION

Communicated to Congress, April 26, 1802

Gentlemen of the Senate and the
House of Representatives:

In pursuance of the act entitled, "An act supplemental to the act, entitled An act for an amicable settlement of the limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi territory," James Madison, Secretary of State, Albert Gallatin, Secretary of the Treasury, and Levi Lincoln, Attorney General of the United States, were appointed commissioners to settle, by compromise, with the commissioners appointed by the State of Georgia, the claims and cession to which the said act has relation.

Articles of agreement and cession have accordingly been entered into, and signed by the said commissioners of the United States and of Georgia; which, as they leave a right to Congress to act upon them legislatively at any time within six months after their date, I have thought it my duty immediately to communicate to the Legislature.

April 26, 1802. TH: JEFFERSON

City of Washington, April 26, 1802.

Sir:

We have the honor to enclose a copy of an agreement entered into between the commissioners of the United States and those of Georgia in pursuance of the act, entitled, "An act supplemental to the act, entitled An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi territory."

The nature and importance of the transaction have induced the insertion of a clause which renders it necessary that the subject should be communicated to Congress, during their present session.

We have the honor to be, very respectfully, sir, your obedient servants,

JAMES MADISON,
ALBERT GALLATIN,
LEVI LINCOLN.

The President of the United States.

ART. II. The United States accept the cession above mentioned, and on the conditions therein expressed: and they cede to the State of Georgia whatever claim, right, or title, they may have to the jurisdiction or soil of any lands lying within the United States, and out

of the proper boundaries of any other State, and situated south of the southern boundaries of the States of Tennessee, North Carolina, and South Carolina, and east of the boundary line hereinabove described, as the eastern boundary of the territory ceded by Georgia to the United States.

In faith whereof the respective commissioners have signed these presents and affixed hereunto their seals.

Done at the city of Washington, in the District of Columbia, this twenty-fourth day of April, one thousand eight hundred and two.

JAMES MADISON, [L.S.]
ALBERT GALLATIN, [L.S.]
LEVI LINCOLN, [L.S.]
Commissioners on the part of the United States.

JAMES JACKSON, [L.S.]
ABRAH. BALDWIN, [L.S.]
JOHN MILLEDGE, [L.S.]
Commissioners on the part of the State of Georgia.

J. Franklin, Senator of the United States for North Carolina,
Samuel A. Otis, Secretary of the Senate of the United States,
John Beckley, Clerk of the House of Representatives of the United States.
) Witnesses

ARTICLES OF THE CONSTITUTION

Art. 4. Sec. 3. Parg. 1:

New States Admitted. New states may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Art. 6. Sec. 1. Parg. 2:

Constitution and Treaties as the Supreme Law. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

GEORGIA STATE CONSTITUTION

Article 1, Sec 6 Para 1, RIPARIAN RIGHTS

Tidewater titles; confirmed, The Act of the General Assembly approved December 16,1902, which extends the Title of ownership of lands abutting on tidal water to the low water mark is hereby ratified and confirmed.

Title 33 U.S.C. Sec. 1

REGULATIONS BY SECRETARY OF THE ARMY FOR NAVIGATION OF WATERS GENERALLY

It shall be the duty of the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his judgment the public necessity may require for the protection of life and property, or of operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. Such regulations shall be posted, in conspicuous and appropriate places, for the information of the public.

CODE OF FEDERAL REGULATIONS (title 33, Navigation) 1973

§209.260(K)(1)(ii). (p.362) Shoreward limit of jurisdiction. Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water.

Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years.

TITLE 18 U.S.C.§ 1

Offenses Classified,
18 U.S.C.§ 1 (1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.

18 U.S.C. § 1 (2), Any other offense is a misdemeanor.

18 U.S.C.§ 3, Offense mala prohibita;

For violations of regulatory statues, for constituting mala prohibita.

18 U.S.C.§ 2236 Searches without warrant.

Whoever, being an officer,agent or employee of the United States or any department or agencythereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such searches, or maliciously and without reasonable cause searches any other building or PROPERTY without a search warrant, shall be fined for the first offense not more than $1,000; and for a subsequent offense shall be fined not more than $1,000 or imprisoned not more than one year, or both.

BOUNDRIES OF THE STATE OF GEORGIA.

Ga. Code 15-101; Boundries of the State. The boundries of Georgia as deduced from the Constitution of Beafort, The Articles of Cession and agreement with the United States of America, entered into on the 24 th of April 1802,

LAWS OF GEORGIA

GA. Code, 15-201: Extent of Sovereignty and Jurisdiction, of this state extend to all places within the limits of her boundries, Except so far as she has voluntarily ceded the same to the United States or adjacent states over a particular localities.

GA Code; 85-1310; Levees and ditches, Construction Authorized, All persons owning or who may hereafter own lands on any watercource are authorized and empowered to ditch and embank their lands, so as to protect the same from freshets and overflows in the said watercourse: Provided always that the said ditching and embanking does not divert said watercourse from its ordinary channel.

Ga. Code; 105-1401; Interfering with the enjoyment of private property, being an obsolute right of every citizen, every act of another which unlawfully interferes with such enjoyment is a tort for which an action shall lie.

GA Code, 105-1406; Damages for continuing trespass, are limited to those which have occurred before action is commenced Subsequent damages flowing from a continnuance of the trespass gives a new cause of action.

Ga. Code; 105-1402 ; Bare possession of lands shall authorize the possessor to recover damages from any person who shall wrongfully, in any manner, interfere with such possession.